United Nations S/AC.44/2004/(02)/151

Security Council

Distr.: General
17 March 2009

Original: English

Security Council Committee established pursuant to resolution 1540 (2004)

Note verbale dated 10 April 2008 from the Permanent Mission of Palau to the United Nations addressed to the Chairman of the Committee

The Permanent Mission of the Republic of Palau to the United Nations presents its compliments to the Chairman of the Security Council Committee established pursuant to Security Council resolution 1540 (2004).

The Permanent Mission of the Republic of Palau to the United Nations has the honour of transmitting its report pursuant to Security Council resolution 1540 (2004) (see annex).*

* The attachments to the report are on file with the Secretariat and are available for consultation.

09-27318 (E) 310309

Annex to the note verbale dated 10 April 2008 from the Permanent Mission of Palau to the United Nations addressed to the Chairman of the Committee

Report of Palau on the implementation of Security Council resolution 1540 (2004)

INTRODUCTION

The United Nations Security Council Resolution (UNSCR) 1540 calls upon all states to present a report to the Committee of the Security Council on the steps taken or that are intended to be taken to implement the resolution. This report identifies the legislation and policies of the Republic of Palau that are relevant to the requirements of UNSCR 1540.

OPERATIVE REQUIREMENTS OF UNSCR 1540

OPERATIVE PARAGRAPH 1:

Decides that **all States shall refrain from providing any form of support to non-State actors that attempt to develop, acquire, manufacture, possess, transport, transfer or use nuclear, chemical or biological weapons and their means of delivery.**

The Government of Palau is committed to withholding any support whatsoever to entities – whether State or non-State actors – attempting to develop, acquire, manufacture, possess, transport, transfer, or use nuclear, chemical, or biological weapons (together, "WMD"), or their means of delivery. To this end, the Constitution of the Republic of Palau (the "Constitution") prohibits the use, testing, storing or disposal of WMD within the territorial jurisdiction of Palau.[1] Additionally, the Government of Palau interprets the Constitution as prohibiting the transport or transfer of WMD within the territory of Palau.[2]

Additionally, the Counter Terrorism Act of 2007 ("Counter Terrorism Act") prohibits any person from knowingly, by any means, directly or indirectly, developing, producing, shipping, transporting, transferring, receiving, acquiring, retaining, possessing, importing, exporting, or manufacturing a WMD. Moreover, the Counter Terrorism Act prohibits non-State actors from attempting to receive, possess, use, transfer, alter, dispose of, or disperse nuclear materials without lawful authority. The punishment for the commission of these offenses is a minimum

---

[1] Palau Const., 1982, art. XIII, § 6 ("Harmful substances such as nuclear, chemical, gas or biological weapons intended for use in warfare, nuclear power plants, and waste materials therefrom, shall not be used, tested, stored, or disposed of within the territorial jurisdiction of Palau without the express approval of not less than three-fourths (3/4) of the votes cast in a referendum submitted on this specific question.") (Exhibit A). Since the adoption of the Constitution in 1982 there have been 3 plebiscites and 8 referenda to permit nuclear material in the territorial jurisdiction of Palau; each failed to garner the three-fourth majority needed to sustain the referendum. At the moment no such referendum is scheduled. It continues to be the policy of the government and people of Palau to remain a WMD free territory.

[2] The Appellate Division of the Supreme Court of Palau has, however, recognized the customary right of innocent passage of nuclear powered and nuclear-armed vessels and aircraft without further approval by the voters of Palau. Gibbons v. Salii (1 ROP Intrm. 333 (9/17/1986) Supreme Court, Appellate Division (Exhibit B).

term of imprisonment of 10 years and a maximum term of life imprisonment, as well as a substantial monetary fine.[3]

The Palauan Criminal Code makes it an offense to aid or abet the commission of any offense under Palauan legislation or to incite, counsel, or procure any person to commit an offense.[4] Accordingly, any form of support or assistance provided to non-State actors attempting to carry out the activities prohibited under Palauan legislation relating to WMD would be an offense under the Palauan Criminal Code.

Any non-State actor attempting to carry out the prohibited activities under Palauan legislation in relation to WMD commits an offense under Palauan law.[5]

Additionally, in accordance with its policy of denying any support whatsoever to entities – whether State or non-State actors – attempting to develop, acquire, manufacture, possess, transport, transfer, or use WMD, and their means of delivery, the Government of Palau has adopted the following international conventions relevant to UNSCR 1540:

- Nuclear Non-Proliferation Treaty, deposited on April 14, 1995;
- Chemical Weapons Convention, deposited on February 3, 2003;
- Biological Weapons Convention, deposited on February 20, 2003; and the
- Comprehensive Nuclear Test Ban Treaty, deposited on August 7, 2007.

Palau is a State Party to twelve conventions relating to counter-terrorism, and a signatory to the International Convention for the Suppression of Acts of Nuclear Terrorism.[6]

OPERATIVE PARAGRAPH 2:

***Decides also* that all States, in accordance with their national procedures, shall adopt and enforce appropriate effective laws which prohibit any non-State actor to manufacture, acquire, possess, develop, transport, transfer or use nuclear, chemical or biological weapons and their means of delivery, in particular for terrorist purposes, as well as attempts to engage in any of the foregoing activities, participate in them as an accomplice, assist or finance them.**

As an initial matter, the Government of Palau considers there to be a low risk of WMD, or their delivery systems, being present in, or being successfully imported into, Palau. Factors relevant to this assessment include, but are not limited to, the country's small size and remote geographical location, its small population size, and its limited air and sea links to other countries.

---

3 Counter Terrorism Act of 2007, RPPL 7-28, §§ 29, 45 (2007) (attached hereto as Exhibit C).
4 17 PNC § 102 (2004) (attached hereto as Exhibit D).
5 17 PNC § 104 (2004) (attached hereto as Exhibit D).
6 See Supplementary Report of Palau on Resolution 1373 (2001), S/2005/71, 2 February 2005 (attached hereto as Exhibit E).

Nevertheless, the Republic of Palau has enacted legislation giving effect to the Chemical Weapons Convention. The prohibitions in our legislation are consistent with, and enable us to meet, the requirements mandated under Operative Paragraph 2 of UNSCR 1540 relating to the manufacture, acquisition, possession, development, transport, transfer or use of nuclear, chemical or biological weapons and their means of delivery.

The Chemical Weapons Prohibition Act ("CWPA"), which implements the Chemical Weapons Convention, prohibits the development, production, acquisition, stockpiling, retention or transfer of chemical weapons. The CWPA also applies to means of delivery. Specifically, the CWPA makes it an offense to:

- Develop, produce, acquire, stockpile or retain chemical weapons;
- Transfer, directly or indirectly, chemical weapons to another person;
- Use chemical weapons;
- Engage in any military preparations to use chemical weapons;
- Assist, encourage, or induce any person to engage in any activity prohibited to a State Party under the Chemical Weapons Convention; or
- Import or export, except with the consent of the Minister of Justice, any toxic chemical or precursors listed in the Schedules to the CWPA.[7]

The Counter Terrorism Act, described above, prohibits the development, production, acquisition, retention or transfer of WMD, including biological and chemical weapons.

Additionally, any use by terrorists of WMD would also be covered by Palauan domestic law if such use of WMD results in the death or injury to persons.

The express prohibition on aiding and abetting, in the Counter Terrorism Act, as well as the general prohibition on aiding and abetting the commission of any offense under Palauan law, means that assisting or acting as an accomplice to the prohibitions contained in the legislation described above would be an offense under Palauan law. This satisfies the requirements articulated in Operative Paragraph 2, which calls on States to implement effective laws to prohibit the support and assistance for non-State actors engaging in any of the prohibited activities listed in Operative Paragraph 2.

The Counter Terrorism Act, as well as the general prohibition on attempts to commit crimes, make it an offense under Palauan law to carry out the prohibited activities under Palauan legislation dealing with WMD. This is relevant to Operative Paragraph 2, which calls on States to implement effective laws to prohibit non-State actors from attempting to engage in the prohibited conduct outlined in Operative Paragraph 2.

Finally, the Counter Terrorism Act prohibits the financing of terrorist acts. While this prohibition is general, and prohibits the financing of any terrorism acts, it does cover the prohibition of terrorists acts involving WMD.

---

[7] Chemical Weapons Prohibition Act, RPPL 7-8 §§ 4005, 4009 (2005) (Exhibit F).

OPERATIVE PARAGRAPH 3:

Decides also **that all States shall take and enforce effective measures to establish domestic controls to prevent the proliferation of nuclear, chemical or biological weapons and their means of delivery, including by establishing appropriate controls over related materials and to this end shall:**

a. Develop and maintain appropriate effective measures to account for and secure such items in production, use, storage or transport.

While there is currently limited legislative coverage for this aspect of the UNSCR 1540, Palau has implemented regulations establishing controls over related materials.[8]

The Marine and Fresh Water Quality Regulation prohibits any person from storing, disposing or allowing the accumulation of radioactive materials in such manner that the substance may potentially enter the surface or ground water of the Republic of Palau without first obtaining written approval of the Palau Environmental Quality Protection Board (the "Board").[9] Additionally, the Board oversees and regulates the importation and use of various pesticides in the Republic's territory.[10] The Board, via its chairman, considers and grants applications for the importation and use of various pesticides.

Additionally, Palau has entered into a Safeguards Agreement with the International Atomic Energy Agency ("IAEA"), pursuant to which, and in accordance with the Protocol attached to the Agreement, the IAEA is permitted to account for and verify the security of any nuclear materials located within the territory of Palau. In any event, Palau's constitution prohibits the storage of nuclear materials within Palauan territory, and the Government of Palau is not aware of any nuclear material located within its territory.[11]

The Government of Palau may consider further regulatory and legislative action in this area in the future.

---

8 "Related material" is defined under UNSCR 1540 as "materials, equipment and technology covered by relevant multilateral treaties and arrangements, or included on national control lists which could be used for the design and development, production or use of nuclear, chemical or biological weapons and their means of delivery."

9 Republic of Palau Environmental Quality Protection Board, Marine and Fresh Water Quality Regulation, 2401-11-23 (1996).

10 Republic of Palau Environmental Quality Protection Board, Pesticide Regulations (1996).

11 Agreement between the Republic of Palau and the International Atomic Energy Agency for the Application of Safeguards in Connection with the Treaty on the Non-Proliferation of Nuclear Weapons, INFCIRC/650, May 13, 2005 (Exhibit G). See also note 1, supra.

b. Develop and maintain appropriate effective physical protection measures.

Currently, there is limited legislative framework or supporting operational mechanisms in place in Palau regulating the physical protection of nuclear, chemical and biological weapons, their means of delivery and related components. As noted above, the Constitution of the Republic, as well as the Counter Terrorism Act, prohibit the acquisition of WMD within the country and make doing so an offense under the Palauan Criminal Code.

This absence of further legislative or operational control reflects the Government's assessment of the current risk of such items being present in, or being imported, into the country.

The Government of Palau is a State Party to the Convention on the Physical Protection of Nuclear Materials, which is also one of the twelve above-mentioned international conventions on counter-terrorism.

c. Develop and maintain appropriate effective border controls and law enforcement efforts to detect, deter, prevent and combat, including through international cooperation when necessary, the illicit trafficking and brokering in such items in accordance with their national legal authorities and legislation and consistent with international law.

d. Establish, develop, review and maintain appropriate effective national export and trans-shipment controls over such items, including appropriate laws and regulations to control export, transit, trans-shipment and re-export and controls on providing funds and services related to such export and trans-shipment such as financing and transporting that would contribute to proliferation, as well as establishing end-user controls; and establishing and enforcing appropriate criminal or civil penalties for violations of such export controls laws and regulations.

The Counter Terrorism Act prohibits the transfer and trafficking in WMD.[12] In addition, Palauan legislation prohibits the export and import of WMD in the first instance, and this would cover occurrences of illicit trafficking of WMD-related materials, given that such activities in Palau would necessarily involve importing or exporting the prohibited WMD goods.[13]

As a general matter, the police, customs and immigration officials of the Palauan government work together to identify and resolve border security risks. In this regard, Palauan officials have the ability and authority to work with their international counterparts in areas of information and intelligence dissemination, as well as on various strategic initiatives. In particular, as a member of the Political and Security Program under the Pacific Island Forum, Palau works with other regional states to collaborate in areas relating to security, transnational crime and terrorism in accordance with PIF's Honiara Declaration and the Nasonini Declaration on Regional Security.[14]

---

12 Counter Terrorism Act of 2007, RPPL 7-28, §§ 29 (2007).

13 See Palauan Const. at Art. 6; see also Ministry of Finance, Custom Regulation, at ¶¶ 4.5 4.8 (2006) (attached hereto as Exhibit H).

14 See Pacific Island Forum, Pacific Islands Forum Secretariat: Political and Security, *at* http://www.forumsec.org/pages.cfm/security/law-enforcement/.

Palau also actively participates in the Pacific Immigration Directors Conference, the Oceania Customs Organisation and the Pacific Island Chief of Police (PICP) programs.

Nevertheless, Palau's limited resources and extended borders make the implementation of these regulations a challenge. The Government of Palau has identified these difficulties and requested further technical assistance from CTED with the aim of developing more effective border control policies, but as yet such assistance has not been forthcoming.[15]

OPERATIVE PARAGRAPH 5:

***Decides* that none of the obligations set forth in this resolution shall be interpreted so as to conflict with or alter the rights and obligations of State Parties to the Nuclear Non-Proliferation Treaty, the Chemical Weapons Convention and the Biological and Toxin Weapons Convention or alter the responsibilities of the International Atomic Energy Agency or the Organization for the Prohibition of Chemical Weapons.**

The Republic of Palau is a State Party to the Biological Weapons Convention, the Chemical Weapons Convention and the Nuclear Non-Proliferation Treaty. The government of Palau agrees and adopts the policy articulated in Operative Paragraph 5.

OPERATIVE PARAGRAPH 6:

***Recognizes* the utility in implementing this resolution of effective national control lists and calls upon all Member States, when necessary, to pursue at the earliest opportunity the development of such lists**

The Government of Palau has not developed nor implemented a national control list to regulate the importation and entry of prohibited substances into the Republic of Palau. This is a result of an assessment, by the Government of Palau, that the risk of such substances successfully entering or otherwise being imported into Palau is minimal due to Palau's small size and remote location.

OPERATIVE PARAGRAPH 7:

Recognizes that some States may require assistance in implementing the provisions of this resolution within their territories and invites States in a position to do so to offer assistance as appropriate in response to specific requests to the States lacking the legal and regulatory infrastructure, implementation experience and/or resources for fulfilling the above. provisions

---

15 In a number of meetings with CTED officials, representatives of Palau have articulated two broad areas of anti-terrorism policy in which Palau requires assistance: 1) the establishment and effective deployment of the Financial Intelligence Unit ("FIU"); and 2) assistance in developing and strengthening Palau's border protection efforts. See Jan. 28, 2008 Mladineo to Beck Ltr (Exhibit I). To date, Palau has focused on obtaining assistance for the FIU, but has received no assistance from CTED. See Combating Money Laundering: Request for Assistance, dated February 13, 2007 (Exhibit J).

The Government of Palau would welcome any technical assistance that is available in assisting it to fully implement the requirements of UNSCR 1540. To this end, the Government of Palau initiated contacts with CTED in early 2005 concerning its need for technical assistance in the area of border control and regulation. Efforts to obtain such assistance are ongoing.

OPERATIVE PARAGRAPH 8:

a. To promote the Universal adoption and full implementation, and where necessary, strengthening of multilateral treaties to which they are parties, whose aim is to prevent the proliferation of nuclear, biological or chemical weapons;

b. To adopt national rules and regulations, where it has not yet been done, to ensure compliance with their commitments under the key multilateral nonproliferation treaties;

c. To renew and fulfill their commitment to multilateral cooperation, in particular within the framework of the International Atomic Energy Agency, the Organization for the Prohibition of Chemical Weapons and the Biological and Toxin Weapons Convention, as important means of pursuing and achieving their common objectives in the area of non-proliferation and of promoting international cooperation for peaceful purposes;

The Republic of Palau firmly supports the existing multilateral disarmament treaties, and the need to strengthen them through robust verification provisions. To build international confidence, it is vital that all states become members of these treaties.

The Republic of Palau is a State Party to the Biological Weapons Convention, Chemical Weapons Convention, the Comprehensive Test Ban Treaty and the Nuclear Non-Proliferation Treaty. Moreover, Palau has also taken an active role in promoting the disarmament agenda, including by presenting at international conferences designed to help other small countries implement the NPT.

d. To develop appropriate ways to work with and inform industry and the public regarding their obligations under such laws.

The Government of Palau believes that local industry and the public are sufficiently informed concerning their obligations pursuant to various applicable laws, and believes that additional action to inform the industry and the public are not necessary at this time. In particular, the Government of Palau believes that the substantial attention devoted to the various attempts to amend the Palauan Constitution to permit the entry and presence of certain prohibited substances had the result of adequately informing the population.

OPERATIVE PARAGRAPH 9:

***Calls* upon all States to promote dialogue and cooperation on non-proliferation so as to address the threat posed by proliferation of nuclear, chemical, or biological weapons, and their means of delivery.**

The Government of Palau supports efforts to promote dialogue and cooperation in order to address issues related to the threat posed by the proliferation of WMD. However, the Government of Palau considers there to be a low risk of WMD, or their delivery systems, being present in or being successfully imported into Palau, and because of limits on Palau's resources, the Government of Palau does not now participate in various international initiatives in this area. Palau is open to reexamining its participation in these initiatives in the future.

OPERATIVE PARAGRAPH 10:

Further to counter that threat, *calls* upon all States, in accordance with their national legal authorities and legislation and consistent with international law, to take cooperative action to prevent illicit trafficking in nuclear, chemical or biological weapons, their means of delivery, and related materials.

The Government of Palau, to the extent its resources will allow it to do so, will work with others to prevent illicit trafficking in nuclear, chemical or biological weapons, their means of delivery, and related materials.